

Appl. No. 10/645,080
Docket No. 9344
Amendment dated May 6, 2008
Reply to Office Action mailed on January 7, 2008
Customer No. 27752

REMARKS

Claims 1-14, 16-24, 26-30 and 32-41 are pending in the present application. Claims 20, 26 and 32 are canceled without prejudice. Claims 1, 24 and 30 have been amended to recite a third layer in communication with and juxtaposed to the second layer. Support for the amendment is found in original claims 20, 26 and 32. Claims 36-41 have been withdrawn as a result of an earlier restriction requirement.

Rejection Under 35 USC §102 Over Slavtcheff, et al. (U.S. Patent No. 6,451,331) (hereinafter referred to as "Slavtcheff").

Claims 1-14, 16-19, 24 and 30 are rejected under 35 USC §102(b) as being anticipated by Slavtcheff.

The Applicants respectfully traverse this rejection.

Slavtcheff does not teach each and every element of the claimed invention. Specifically, Slavtcheff does not teach a third layer in communication with and juxtaposed to the second layer. Slavtcheff does not teach an article for cleansing body surfaces that comprises a cleansing composition located on at least one surface of the web of the first layer; and an effervescent composition associated with the webs of a second layer. Slavtcheff does not teach an article for cleansing body surfaces that comprises cleansing composition and an effervescent composition which are in separate locations within the article. In fact, the surfactant and the effervescent composition of Slavtcheff are positioned together within the sachet (See Slavtcheff column 4, 15-17 and 65-67, Examples 1-6, and Claims 1 and 5). Because Slavtcheff does not teach each and every element of the amended independent claims, the claimed invention is not anticipated. Thus, the Applicants respectfully submit that the rejection should accordingly be withdrawn.

Rejection Under 35 USC §103(a) Over Slavtcheff, et al. (U.S. Patent No. 6,451,331) (hereinafter referred to as "Slavtcheff") in view of Bries, et al. (U.S. Patent No. 5,110,843) (hereinafter referred to as "Bries") further in view of Bergquist, et al. (U.S. Patent No. 5110,843) (hereinafter referred to as "Bergquist").

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Claims 1-14, 16-24, 26-30 and 32-35 have been rejected under 35 USC §103(a) as being obvious over Slavtcheff in view of Bries further in view of Bergquist.

The Applicants respectfully traverse the rejection.

The patent statute states:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if such difference between the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made. 35 USC §103(a)

A determination that a claim is obvious under §103(a) is a legal conclusion involving four factual inquires: (1) the scope and content of the prior art; (2) the differences between the claimed invention and the prior art; (3) the level of ordinary skill in the pertinent art; and (4) secondary considerations, if any, or non-obviousness. *Graham v. John Deere Co.* 383 U.S. 1, 17-18 (1966). Secondary considerations of obviousness include factors such as commercial success, long-felt but unresolved needs, the failure of others, and/or unexpected results achieved by the claimed invention. *Id.* Furthermore, obviousness must be determined as of the time the invention was made and in view of the state of the art that existed at the time. *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F. 2d 1044, 1050-51 (Fed. Cir 1988).

The Patent Office "has the burden under §103 to establish a prima facie case of obviousness." *In re Fine*, 837 F. 2d 1071 1074 (Fed. Cir. 1988); MPEP §2142 (8th Ed. Rev. 6, Sept. 2007) ("the Examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness."). The Supreme Court recently identified a number of rationales that may be used to support a conclusion of obviousness, consistent with the framework set forth in its decision in *Graham v. John Deere Co.* (*See KSR int'l Co. V. Teleflex, Inc.* 127 S. Ct. 1727, 1739-40 (2007)). These and other representative rationales are described at MPEP § 2143 (8th Ed., Rev. 6, Sept. 2007). Regardless of the supporting rationale, however, the Patent Office must clearly articulate facts and reasons why the claimed invention "as a whole" would have been obvious to a hypothetical

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person having ordinary skill in the art at least as of the claimed invention's filing date. (*See KSR Int'l Co. v. Teleflex, Inc.* 127 S. Ct. 1741). Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rationale underpinning to support the legal conclusion of obviousness *In re Kahn*, et al., 441 F. 3d 977, 988 (Fed. Cir 2006). The key to supporting any rejection under 35 USC §103 is a clear articulation of the reasons why the claimed invention would have been obvious.

A combination of references may be used to support a rationale of obviousness. However, the test for obviousness is "what the combined teachings of those references would have suggested to those of ordinary skill in the art" (*See* MPEP § 2145).

The Applicants respectfully submit that the combination of Slavtcheff in view of Bries further in view of Berquist does not provide the motivation for one skilled in the art to modify the primary reference of Slavtcheff to create the article recited in the amended independent claims. The action does not clearly articulate facts and reasons why the claimed invention "as a whole" would have been obvious to a hypothetical person having ordinary skill in the art at least of the claimed invention's filing date. Specifically, the action does not articulate findings of fact relating to the scope and content of the prior art and does not acknowledge clear difference between the claimed invention and the prior art. Still further, while the action appears to rationalize this conclusion of obviousness, the action does not articulate facts sufficient to support the asserted rationales (*See* MPEP 2143).

Slavtcheff teaches "a swiping article which includes an effervescent cleanser composition held within a sachet" (*See* Slavtcheff, abstract). The surfactant and the effervescent composition in the article of Slavtcheff are positioned together within the sachet (*See* Slavtcheff column 4, 15-17 and 65-67, Examples 1-6, and Claims 1 and 5). Bries teaches articles multilayered polyurethane foam having a detergent or cleaner impregnated in an inner layer (*See* Bries, column 5, lines 49-52). Bries does not teach an effervescent composition. Bergquist teaches articles an article for cleansing body surfaces including an effervescent cleansing composition capable of generating a foam upon contact with water and a pouch housing a cleansing composition which is formed of

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first and second water-insoluble substrates (See Bergquist at [0011] to [0022]). The cleansing composition components within the pouch comprises an acidic material, an alkaline material and optional a dry surfactant (See Bergquist at [0033], [0034] and [0037]).

The Office Action has not accurately articulated what combined teachings of those references would have suggested to those of ordinary skill in the art. The Office Action has not explained why one of ordinary skill in the art would be motivated by Bries or Bergquist to separate the surfactant and effervescent composition of Slavtcheff. Bries does not teach an article that comprises an effervescent composition let alone separation. Bergquist does not teach or suggest the separation of the surfactant and effervescent composition. The Office Action has not clearly articulated facts and rationale why the claimed invention "as a whole" would have been obvious to a hypothetical person having ordinary skill in the art at least as of the claimed invention's filing date. The action therefore, does not set forth a prima facie case of obviousness. Accordingly, the Applicants respectfully traverse the rejection, and request reconsideration and withdrawal of the rejection.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied reference(s). In view of the foregoing, entry of the amendment(s) presented herein reconsideration of this application, and allowance of the pending claim(s) are respectfully requested.

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Respectfully submitted,